

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)	
)	
v.)	Criminal Action No. 0504020324
)	
KWAME WISE,)	
)	
Defendant.)	

Submitted: June 12, 2006
Decided: August 22, 2006

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ORDER

COMES NOW, the Court finds as follows:

1) The defendant, Kwame Wise, (hereinafter "Wise") was arrested on April 18, 2005 for the offenses of *Driving While Under the Influence of Alcohol in violation of 21 Del. C. § 4177(a)*, *Driving While Suspended or Revoked in violation of 21 Del. C. § 2756(A)* and *Driving an Unsafe Motor Vehicle in violation of 21 Del. C. § 2115(a)*.

2) On April 6, 2006, Wise entered pleas to *Driving While Under the Influence of Alcohol* and the amended charge of *Driving Without a License, in violation of 21 Del. C. § 2701(a)*.

3) The State moved to have Wise sentenced as a second-offender for the offense of *Driving While Under the Influence of Alcohol* pursuant to 21 Del. C. § 4177(d)(2) on the basis of a prior conviction of a similar offense in the State of Maryland, July 19, 2000.

4) Wise does not dispute that the date of the Maryland offense comes within the statutory five (5) year period for second offense treatment under 21 Del. C. § 4177(d)(2) if it is considered a prior conviction. Wise, however, argues the unreliability of the record which the State relies to prove the previous conviction.

5) Wise argues that the State's reliance upon a computer print-out of his motor vehicle record is insufficient and unreliable to prove a prior conviction. Wise maintains that to prove a prior conviction, the certified record of the State where the violation occurred is required.

6) The State argues that the print-out is sufficient, since it is generated by the Court staff and is routinely relied upon by the Court and the parties as prior record of traffic offenses or lack thereof.

7) The provisions of 21 Del. C. Chapter 3 grant the Department of Public Transportation and Department of Safety and Homeland Security, of which the Division of Motor Vehicles is a part, the authority to maintain driving records for all persons licensed in the State of Delaware. Further, pursuant to Chapter 4, the Secretary of Transportation is authorized to enter into agreements with other jurisdictions to ensure compliance with motor vehicle laws and regulations. The provisions of Title 21, Chapter 81 "*Drivers License Compact*" provide that a party state shall report conviction of a person from another party state occurring within its jurisdiction to the licensing authority

of the home state of the licensee. The language further provides that the licensing state shall give the same effect to the conduct reported as it would if such conduct had occurred in the home state for driving under the influence of intoxicating liquor.

8) The document which the State seeks to rely is a computer printout of records maintained by the Division of Motor Vehicles pursuant to its statutory authority to administer the Motor Vehicle Code. It is a duty imposed by statute which similarly imposes obligations and penalties for misuse or inappropriate distribution.

9) The entry which is reflected as a conviction in Maryland is collected and maintained pursuant to the reciprocal and compact agreements authorized by statute. Therefore, to conclude that such are unreliable, would be inconsistent with the statutory scheme and the authority granted to the Secretary. Therefore, it is appropriate for the Court to rely upon the records of the Division of Motor Vehicle to determine prior violations. As the Superior Court held in *State v. Stewart*, 2004 W.L. 1965986 (August 31, 2004), before a Court may sentence a defendant in Delaware for a second offense where the first conviction occurred in another state, the prosecution must prove that the statute was similar to Delaware. This Court held in *State v. Parsons*, C.A. 02100077737, C.J. Smalls (April 22, 2005) that the Maryland statute is similar to Delaware's.

10) In this instance, the State relies upon a computer printout to support its position that Defendant is required to be sentenced as a second-offender which requires imprisonment. It is not unusual for the State to rely upon such document where there is no challenge to the convictions. However, where there is a challenge to a conviction or the defendant raises a question, it appears fundamental fairness requires the State to produce a certified copy of the Delaware record to support its position.

11) The defendant's argument that a certified record from the State where the conviction occurred does not have merit because it would defeat the intent and purpose of the reciprocal and compact agreements as provided by the statute.

Accordingly, in this instance where the defendant challenges the record, the State is required to provide a Delaware certified copy of the defendant's driving record for sentencing. The Clerk will schedule the matter for sentencing.

SO ORDERED this 22nd day of August, 2006

Alex J. Smalls
Chief Judge

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